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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FORREST,) CV-22-3699-PCP
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) MAY 20, 2025
)
META PLATFORMS, INC.,) PAGES 1-27
)
DEFENDANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE VIRGINIA K. DEMARCHI
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF: HECKER FINK LLP
350 FIFTH AVENUE, 63RD FLOOR
NEW YORK, NY 10118
BY: JOHN QUINN
TAYONNA NGUTTER

DEREK G. HOWARD LAW FIRM, INC.
42 MILLER AVENUE
MILL VALLEY, CA 94941
BY: DEREK G. HOWARD

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONT.'D)

2 FOR THE DEFENDANT: PAUL, WEISS, RIFKIND, WHARTON &
3 GARRISON LLP
4 2001 K STREET, NW
WASHINGTON D.C., DC 20006

4 **BY: MELISSA BROOKE FELDER ZAPPALA**

5 PAUL, WEISS, RIFKIND, WHARTON &
6 GARRISON LLP
535 MISSION STREET, 24TH FLOOR
7 SAN FRANCISCO, CA 94105

7 **BY: WALTER F. BROWN**
8 **KATARINA COOPER**
9 **RUSSELL WIRTH**

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SAN JOSE, CALIFORNIA

MAY 20, 2025

P R O C E E D I N G S

(COURT CONVENED AT 10:06 A.M.)

THE COURT: GOOD MORNING. PLEASE BE SEATED.

THE CLERK: CALLING CASE 22-CV-03699-PCP.

FORREST VERSUS META PLATFORMS, INC., ON FOR DISCOVERY
HEARING.

IF THE PARTIES COULD STATE THEIR APPEARANCES, PLEASE,
BEGINNING WITH PLAINTIFF.

MR. QUINN: GOOD MORNING, YOUR HONOR.

JOHN QUINN FROM HECKER FINK FOR PLAINTIFF,
DR. ANDREW FORREST.

WITH ME IS MY TAYONNA NGUTTER AND OUR CO-COUNSEL,
DEREK HOWARD.

THE COURT: GOOD MORNING.

AND YOU ARE SORT OF BEHIND THIS LITTLE -- IT'S THE ONE ON
THE LEFT.

(PAUSE IN PROCEEDINGS.)

THE COURT: ALL RIGHT. AND LET'S HAVE THE
DEFENDANT'S APPEARANCE.

MS. ZAPPALA: GOOD MORNING.

ON BEHALF OF DEFENDANTS, MELISSA ZAPPALA FROM PAUL WEISS.
AND WITH ME ARE MY COLLEAGUES, WALTER BROWN, KATARINA COOPER
AND RUSSELL WIRTH.

THE COURT: GOOD MORNING.

1 WE ARE HERE FOR A DISCOVERY DISPUTE AT DOCKET 205 THAT'S
2 REGARDING META'S DISCOVERY FOR DR. FORREST. SO I'M GOING TO
3 BEGIN WITH META ON THIS QUESTION.

4 AND MY FIRST QUESTION, AND I WILL ASK IT OF BOTH PARTIES,
5 IS BOTH OF YOU REFER TO THIS FIRST PHASE OF DISCOVERY. ARE WE
6 NOT PAST A FIRST PHASE OF DISCOVERY AT THIS POINT?

7 I MEAN, IT SEEMS THAT YOUR CLOSE OF DOCUMENT --
8 SUBSTANTIAL DOCUMENT PRODUCTION -- IS MAY 30TH, AND ALL FACT
9 DISCOVERY CLOSES ON JULY 29TH, SO DO I NEED TO WORRY ABOUT
10 PHASES AT THIS POINT?

11 MS. ZAPPALA: I AM HAPPY TO TAKE THAT ISSUE.

12 THE COURT: YES, PLEASE.

13 MS. ZAPPALA: SO YES, WE ARE STILL IN PHASE ONE OF
14 DISCOVERY, AND WE ARE STILL LOOKING TO THE QUESTION OF, AS
15 YOUR HONOR NOTED IN THE PREVIOUS HEARING, WE PROCESSED THE
16 EXCLUSION AND THE FACT OF THE EFFECTIVE CONTENT OF THAT AS TO
17 INPUT AND OUTPUT.

18 WE ARE CURRENTLY IN THE PROCESS OF CONTINUING TO
19 INVESTIGATE THAT ON META'S SIDE, AND WE DO BELIEVE THAT THE
20 DOCUMENTS AND INFORMATION WE HAVE REQUESTED FROM PLAINTIFF GO
21 TO THAT ISSUE.

22 WE UNDERSTAND WE HAVE SAT DOWN AND IDENTIFIED, YOUR HONOR,
23 AND WE WOULD BE WILLING TO WORK WITH PLAINTIFF ON A PRODUCTION
24 OF INFORMATION OF DOCUMENTS PAST THE SUBSTANTIAL COMPLETION
25 DEADLINE.

10:08:18 1 THE COURT: OKAY. I'M NOT SURE THAT PHASES MATTER AT
10:08:21 2 THIS POINT, LET ME ASK DR. FORREST'S SIDE, DO WE NEED TO FOCUS
10:08:26 3 ON PHASES?

10:08:27 4 MR. QUINN: I'M HAPPY TO ABANDON THE WORD "PHASES."
10:08:29 5 I DO THINK TWO POINTS THAT ARE IMPORTANT.

10:08:32 6 ONE, WE ARE IN A LIMITED PERIOD -- A CABINED DISCOVERY
10:08:36 7 PROCESS FOCUSED EXCLUSIVELY ON META'S AFFIRMATIVE DEFENSE UNDER
10:08:40 8 230 WHICH IS JUST A QUESTION ABOUT WHETHER THEIR TOOLS AND
10:08:43 9 PROCESSES ARE MAKING A MATERIAL CONTRIBUTION TO AD CONTENT. SO
10:08:47 10 I DO THINK IT'S SIGNIFICANT TO THIS DISPUTE THAT THAT'S ALL
10:08:49 11 THAT WE ARE ADDRESSING IN DISCOVERY AT THIS TIME.

10:08:51 12 THE COURT: LIKE EVER IN THE CASE?

10:08:53 13 SO LET ME JUST ASK THIS BETTER QUESTION: SO BY JULY 29TH,
10:08:58 14 2025, PER JUDGE PITT'S ORDER, WHAT ARE YOU TO HAVE COMPLETED,
10:09:02 15 JUST THE DISCOVERY REGARDING THE SECTION 230 ISSUE?

10:09:05 16 MR. QUINN: I THINK THAT'S THE SHARED UNDERSTANDING
10:09:07 17 OF THE PARTIES, YOUR HONOR, YES.

10:09:08 18 MS. ZAPPALA: I WOULD ALSO NOTE WE HAVE REQUESTED AN
10:09:12 19 EXTENSION OF THE SUBSTANTIAL COMPLETION DEADLINE. WE ARE
10:09:14 20 CURRENTLY IN DIALOG WITH PLAINTIFF ON THAT ISSUE.

10:09:17 21 THE COURT: OKAY. BECAUSE WHEN I LOOKED AT THE CASE
10:09:20 22 SCHEDULE THAT YOU HAVE, IT SEEMED LIKE IT WAS NOT LIMITED TO
10:09:25 23 JUST THIS ISSUE, WELL MAYBE IT IS. SO THE SUMMARY JUDGEMENT
10:09:33 24 BRIEFING IS ONLY GOING TO BE IN THE 230.

10:09:36 25 OKAY. SO I'M NOT SURE IT MAKES SENSE TO TALK ABOUT

1 PHASES, BUT IN ANY EVENT, I UNDERSTAND THE POINT NOW.

2 OKAY. THANK YOU FOR THAT.

3 SO THEN WE HAVE THIS DISPUTE SORT OF FRAMED IN TERMS OF
4 CATEGORIES OF DISCOVERY THAT META WANTS, AND SORT OF THE
5 PROCESS TO GET AT THAT INFORMATION.

6 IT'S NOT REALLY BRIEFED IN THE SENSE OF THIS SPECIFIC
7 REQUEST IS OBJECTIONABLE FOR THIS REASON VERSUS THAT REQUEST OR
8 THIS INTERROGATORY, SO I MAY HAVE SOME QUESTIONS ALONG THE
9 LINES -- ALONG THE WAY WITH THOSE ISSUES, BUT KIND OF TREATING
10 THE DISPUTE IN THE WAY THE PARTIES HAVE FRAMED IT, IT SEEMS TO
11 ME THAT WITH MAYBE A COUPLE OF EXCEPTIONS IN THE
12 INTERROGATORIES, THE REQUEST THAT META HAS TRACK PRETTY CLOSELY
13 THE ALLEGATIONS IN THE COMPLAINT.

14 SO FROM META'S PERSPECTIVE, IS IT JUST A QUESTION OF HOW
15 DO WE GET AT ESI, FOR EXAMPLE, CUSTODIANS, SEARCH TERMS, THOSE
16 KINDS OF THINGS. AND IF THAT'S THE CASE, HAS META MADE A
17 PROPOSAL ALONG THOSE LINES WITH RESPECT TO CUSTODIAN, SEARCH
18 TERMS AND THE OTHER THINGS YOU WOULD NEED TO GET AT THE ESI?

19 MS. ZAPPALA: CERTAINLY, YOUR HONOR.

20 WHAT I WOULD SAY IS WE ARE CURRENTLY AT THE POINT WHERE
21 PLAINTIFF HAS REFUSED TO ENGAGE IN ANY DISCUSSION REGARDING
22 PRODUCTION OF DOCUMENTS OR INFORMATION RELEVANT TO PHASE ONE.

23 SO WE ARE MORE THAN HAPPY TO ENGAGE IN DISCUSSION WITH
24 PLAINTIFF REGARDING CUSTODIANS THAT -- WHERE DOCUMENTS MIGHT BE
25 IN THE POSSESSION OF DR. FORREST, BUT PLAINTIFF HAS EXTENSIVELY

1 REFUSED TO PRODUCE OR CONSIDER PRODUCING ANY DOCUMENTS RELEVANT
2 TO PHASE ONE OTHER THAN TO VERY LIMITED DISCREET SETS OF
3 DOCUMENTS.

4 ONE, THE ALLEGED SCAM ADS AT ISSUE, BUT PLAINTIFF HAS NOT
5 PRODUCED ANY DOCUMENTS OR COMMUNICATIONS ABOUT THOSE SCAM ADS
6 OTHER THAN THOSE THAT REFER TO THE SECOND BUCKET OF DOCUMENTS
7 THAT PLAINTIFF HAS PRODUCED WHICH ARE DOCUMENTS THAT THEY
8 PRODUCED IN THE AUSTRALIA CRIMINAL PROCEEDING, WHICH I WILL
9 SUBMIT ARE NOT RELEVANT TO PHASE ONE, ESSENTIALLY THEY ARE
10 DOCUMENTS THAT GO TO PHASE TWO WHICH ESSENTIALLY ADDRESSES THE
11 QUESTION OF META'S ISSUE TO COMBAT REGARDING SCAM ADS, HOWEVER
12 THIS PHASE ADDRESSES META'S ADVERTISING AND PROCESSES AND
13 PLAINTIFF HAS NOT WANTED TO ENGAGE IN THOSE DISCUSSIONS.

14 THE COURT: OKAY. AND IS IT YOUR UNDERSTANDING THAT
15 THE ONLY CUSTODIAN WHO IS RELEVANT HERE IS DR. FORREST HIMSELF,
16 OR DO YOUR REQUESTS ENCOMPASS PEOPLE HE MAY HAVE EMPLOYED TO DO
17 THE KIND OF INVESTIGATION AND MONITORING?

18 MS. ZAPPALA: YOUR HONOR, IT WOULD NOT JUST ENCOMPASS
19 DR. FORREST, AND WE WOULD WANT TO HAVE A DISCUSSION ABOUT
20 POTENTIAL CUSTODIAN AND SOURCES OF DATA.

21 THE COURT: OKAY. I DO HAVE -- BEFORE I LEAVE META'S
22 SIDE AND GO TO DR. FORREST'S SIDE, I DO HAVE SOME QUESTIONS
23 ABOUT INTERROGATORIES, NOT DOCUMENT REQUESTS, BUT THE
24 INTERROGATORIES, AND I THINK THOSE ARE AT -- EXCUSE ME --
25 EXHIBIT 3.

1 INTERROGATORY NUMBER TWO ASKS FOR INFORMATION ABOUT
2 ADVERTISEMENTS THAT DR. FORREST PLACED HIMSELF. AND I WAS
3 WONDERING HOW THIS INFORMATION, THE DETAILS THAT ARE BEING
4 REQUESTED IN INTERROGATORY NUMBER TWO, ARE RELEVANT TO A CLAIM
5 OR DEFENSE?

6 MS. ZAPPALA: SURE. ABSOLUTELY.

7 SO SINCE THIS PHASE OF DISCOVERY ADDRESSES META'S
8 ADVERTISING TOOLS, PROCESSES, AND IF DR. FORREST HAS IN FACT
9 CREATED ADVERTISING TOOLS, AND WE UNDERSTAND FROM THE DOCUMENTS
10 PRODUCED IN THE AUSTRALIA MATTER THAT DR. FORREST MAY HAVE
11 ENGAGED EXPERTS TO, IF NOT CREATE ADVERTISEMENTS, BUT CERTAINLY
12 ENGAGE IN THE PROFFER, THEN HE OR THE PEOPLE HE'S WORKED WITH
13 MAY HAVE AN UNDERSTANDING OF THE VARIOUS TOOLS AND PROCESSES
14 AND HOW THEY IMPACT HOW -- THE CREATION OF ADVERTISEMENTS.

15 THE COURT: I'M SORRY, YOU ARE SAYING THAT YOUR
16 UNDERSTANDING IS THAT DR. FORREST MAY HAVE CREATED ADS, LIKE
17 FOR TESTING PURPOSES, OR HAD AN EXPERT CREATE ADS FOR
18 INVESTIGATION PURPOSES?

19 MS. ZAPPALA: I'M NOT ENTIRELY SURE EXACTLY WHY, BUT
20 I DO BELIEVE THAT MAY HAVE HAPPENED.

21 THE COURT: OKAY. SO -- BUT I'M STILL NOT CLEAR ON
22 WHY, PER THE INTERROGATORY, META WOULD NEED TO KNOW HOW LONG AN
23 AD RAN, HOW MANY IMPRESSIONS IT RECEIVED, WHAT THE BUDGET WAS,
24 AND -- WELL MAYBE THE PURPOSE IS RELEVANT, BUT I'M NOT SURE.

25 WHY DO YOU NEED ALL THIS INFORMATION ABOUT HIS ADS?

10:14:21 1 MS. ZAPPALA: SURE.

10:14:22 2 I THINK WE WOULD BE OPEN TO A DISCUSSION ABOUT POTENTIALLY
10:14:25 3 NARROWING THE SCOPE OF THE INTERROGATORY, BUT I THINK THE FACT
10:14:28 4 REMAINS THE PLAINTIFF HAS REFUSED TO PROVIDE ANY INFORMATION
10:14:31 5 RESPONSIVE TO THAT INTERROGATORY.

10:14:32 6 THE COURT: OKAY. AND THEN WHILE WE ARE AT IT, LET
10:14:35 7 ME ASK ABOUT INTERROGATORY NUMBER FOUR, WHICH WAS THE OTHER ONE
10:14:39 8 THAT CAUGHT MY EYE. "IDENTIFY AND DESCRIBE THE EFFORTS OF YOU
10:14:42 9 OR THE CYBERSECURITY PROFESSIONALS TO IDENTIFY, ANALYZE,
10:14:46 10 INVESTIGATE AND INSPECT, ASSESS, EXAM OR EVALUATE THE ALLEGED
10:14:50 11 ADVERTISEMENTS."

10:14:51 12 SO WHAT DO YOU HAVE IN MIND THERE? A MASSIVE NARRATIVE
10:14:54 13 ABOUT THE ENTIRE INVESTIGATION, OR SOMETHING MORE TAILORED?

10:14:58 14 MS. ZAPPALA: WELL I THINK AGAIN, THIS IS SOMETHING
10:15:00 15 WE WOULD BE WILLING TO DISCUSS WITH PLAINTIFF. PERHAPS
10:15:03 16 PLAINTIFF WANTS TO PROVIDE A 33(D) RESPONSE, BUT WHAT WE HAVE
10:15:07 17 THERE IS TO UNDERSTAND PRECISELY WHAT PLAINTIFF HAS DONE TO
10:15:12 18 ENGAGE IN INVESTIGATION OF THE ADVERTISEMENTS. THERE HAS BEEN
10:15:14 19 A LOT OF PUBLICITY ABOUT DR. FORREST'S EFFORTS TO INVESTIGATE,
10:15:20 20 AND WE AGREE WITH PLAINTIFF ON A REASONABLE SCOPE.

10:15:24 21 THE COURT: OKAY. THANK YOU.

10:15:25 22 ARE THERE ANY OTHER MATTERS THAT YOU WOULD LIKE TO ARGUE
10:15:27 23 IN SUPPORT OF META'S POSITION BEFORE I TURN TO DR. FORREST?

10:15:31 24 MS. ZAPPALA: JUST A COUPLE OF THINGS THAT I WOULD
10:15:33 25 NOTE.

1 PLAINTIFF HAS REFUSED TO EVEN SHOW DOCUMENTS, AND
2 PLAINTIFF HAS SUGGESTED THAT THERE ARE NO DOCUMENTS THAT ARE
3 SORT OF RELEVANT TO PHASE ONE THAT THEY HAVE NOT ENGAGED IN AN
4 INITIAL REVIEW. AND I THINK WHAT WE ARE ASKING FOR IS A
5 REASONABLE SEARCH TO DETERMINE WHETHER OR NOT DOCUMENTS EVEN
6 EXIST.

7 AND I WOULD ALSO NOTE THAT PLAINTIFF HAS ALSO ASSERTED
8 THAT IT WOULD BE BURDENSOME FOR THEM TO GO AND LOOK FOR
9 DOCUMENTS ON THE THEORY THAT MOST OF THE DOCUMENTS WOULD BE IN
10 META'S POSSESSION.

11 BUT AGAIN, WHAT WE HAVE SEEN IS THAT DR. FORREST HAS IN
12 FACT ENGAGED IN SUBSTANTIAL ANALYSIS AND INVESTIGATION OF THE
13 SCAM ADS AND HAS NOT SUPPORTED A SOLUTION THAT IT WOULD BE
14 BURDENSOME.

15 AND THE FACT THAT HE HAS ENGAGED IN THESE INVESTIGATIONS
16 DEMONSTRATES THAT A REASONABLE SEARCH WOULD NOT BE BURDENSOME.

17 THE COURT: AND WHAT ABOUT THE PRIVILEGE AND/OR WORK
18 PRODUCT ARGUMENTS THAT ARE ADDRESSED AT A PRETTY HIGH LEVEL IN
19 THE BRIEFING?

20 MS. ZAPPALA: THANK YOU FOR THAT REMINDER,
21 YOUR HONOR.

22 YES, PLAINTIFF HAS, IN THE COMPLAINT, ASSERTED THAT THERE
23 ARE 1,154 SCAM ADS THAT HE HAS IDENTIFIED. AND HE HAD ASKED
24 PLAINTIFF TO IDENTIFY HOW HE HAS TRACKED THOSE SCAM ADS BECAUSE
25 PLAINTIFF HAS PRODUCED TO US ROUGHLY I BELIEVE 700 SCAM ADS.

10:17:01 1 WE ARE TRYING TO UNDERSTAND THE DELTA BETWEEN THE ALLEGATION IN
10:17:04 2 THE COMPLAINT AND WHAT PLAINTIFF HAS PRODUCED.

10:17:06 3 AND THE PLAINTIFF HAS ASSERTED THAT HE HAS TRACKED THEM IN
10:17:10 4 SOME WAY. SO WE ARE ASKING FOR INFORMATION ABOUT THE TRACKING.

10:17:15 5 NOW PLAINTIFF DID, IN THE BRIEFING, ASSERT PRIVILEGE OVER
10:17:19 6 THIS TRACKING INFORMATION, WE BELIEVE FOR THE FIRST TIME, AND I
10:17:22 7 WANT TO EMPHASIZE WE ARE NOT LOOKING FOR PRIVILEGED
10:17:25 8 INFORMATION, BUT TO THE EXTENT THERE IS NON-PRIVILEGED
10:17:28 9 INFORMATION REGARDING THIS TRACKING, WE THINK WE ARE ENTITLED
10:17:30 10 TO IT.

10:17:31 11 THE COURT: AND HAVE THE PARTIES EXCHANGED PRIVILEGE
10:17:34 12 LOGS AT THIS POINT?

10:17:35 13 MS. ZAPPALA: NO, WE HAVE NOT.

10:17:36 14 THE COURT: IS THERE A SECOND DEADLINE FOR DOING THAT
10:17:38 15 THAT YOU ALL HAVE AGREED TO?

10:17:40 16 MS. ZAPPALA: NO, THERE IS NO NOT A DEADLINE FOR
10:17:41 17 DOING THAT.

10:17:42 18 THE COURT: ALL RIGHT. THANK YOU.

10:17:43 19 LET ME TURN TO DR. FORREST.

10:17:45 20 AND I WILL JUST TELL YOU MY TENTATIVE IMPRESSION FROM
10:17:51 21 HAVING READ THE PAPERS.

10:17:53 22 I REALLY DON'T UNDERSTAND WHY DR. FORREST IS RESISTING THE
10:17:56 23 DISCOVERY HERE, AND I WILL TELL YOU WHY. HIS COMPLAINT
10:18:00 24 INCLUDES A NUMBER OF FACTUAL ALLEGATIONS THAT NOT ONLY SUGGEST
10:18:05 25 THAT HE HAS RELEVANT AND RESPONSIVE INFORMATION, AT LEAST AS OF

1 THE TIME THE COMPLAINT WAS PREPARED AND FILED, BUT THE DISPUTE
2 BEFORE JUDGE PITTS IN THE BRIEFING ON THE MOTION TO DISMISS
3 RESULTED IN A CONCLUSION -- A FINDING BY JUDGE PITTS THAT THERE
4 WAS A DISPUTE OF FACT BETWEEN THE PARTIES.

5 SO IT SEEMS TO ME THAT IN THIS SITUATION, DR. FORREST GETS
6 TO TAKE DISCOVERY OF META OF THE INFORMATION THAT META HAS AND
7 WILL RELY ON REGARDING ITS POINT OF VIEW ON THE SECTION 230
8 ISSUE, I'M USING THAT AS SHORTHAND, AND CONVERSELY META GETS TO
9 TAKE DISCOVERY OF DR. FORREST ON THE CONTRARY INFORMATION THAT
10 HE PURPORTS TO HAVE REGARDING HIS VIEW ABOUT THE ADVERTISING
11 TOOLS AND HOW THEY WORK.

12 AND SO HE'S NOT -- DR. FORREST IS NOT JUST A PASSIVE
13 VICTIM IN THIS SITUATION, HE WAS VERY ACTIVE, ACCORDING TO HIS
14 OWN COMPLAINT, IN INVESTIGATING WHAT WAS GOING ON, HOW THE ADS
15 WERE CREATED, ET CETERA, ET CETERA.

16 AND THIS INFORMATION IS NOT ONLY IN THE COMPLAINT BUT IT'S
17 BEEN IN PUBLISHED ARTICLES ABOUT THIS CASE.

18 SO DR. FORREST IS HERE IN U.S. COURT SEEKING RELIEF, AND
19 THAT MEANS U.S. DISCOVERY, WHICH IS UNPLEASANT, BUT IT JUST
20 SEEMS TO ME THAT WE HAVE TO LOOK AT RULE 26 AND THE RULES THAT
21 GOVERN ALL DISCOVERY, AND THAT'S RELEVANCE AND PROPORTIONALITY.

22 SO IF THE DISCOVERY REQUESTED IS RELEVANT TO A CLAIM OR
23 DEFENSE, AS IT APPEARS GENERALLY TO BE, AND IT'S NOT REALLY
24 ARGUED, AS I SAID, BETWEEN THE PARTIES ABOUT THIS PARTICULAR
25 REQUEST IS NOT RELEVANT, THAT THEN IT SEEMS LIKE THE FOCUS OF

10:19:53 1 THE DISPUTE IS PROPORTIONALITY.

10:19:56 2 THAT'S JUST MY TAKE, HAVING READ THE PAPERS, SO I INVITE
10:19:59 3 YOU TO RESPOND TO THAT AND ANYTHING ELSE YOU WOULD LIKE TO
10:20:01 4 RESPOND TO AT THE OUTSET.

10:20:02 5 MR. QUINN: SURE. THANK YOU, YOUR HONOR.
10:20:03 6 A NUMBER OF POINTS.

10:20:04 7 YOU KNOW, FIRST OFF I WILL AVOID THE WORD "PHASE" BUT WE
10:20:08 8 ARE IN THIS LIMITED -- HAVE A LIMITED SCOPE BEFORE US AT META'S
10:20:12 9 REQUEST ABOUT HOW ITS TOOLS AND PROCESSES DO OR DON'T MAKE A
10:20:15 10 MATERIAL CONTRIBUTION.

10:20:17 11 AND WE HAVE ALL USED THE TERM, PROVERBIAL BLACK BOX, TO
10:20:21 12 DESCRIBE THE NATURE OF THOSE FACTS. SO THAT'S JUST PROPRIETARY
10:20:24 13 INFORMATION, IT'S NONPUBLIC. THE COMPLAINT WAS BASED ON PUBLIC
10:20:27 14 INFORMATION, INTERVIEWS THAT MR. ZUCKERBERG HAS GIVEN ABOUT
10:20:31 15 MOVING IN THE DIRECTION OF AUTOMATED ADS AND AI ADS, BUT THE
10:20:37 16 COMPLAINT IS ASSEMBLED WITH THE ASSISTANCE OF COUNSEL AND SO
10:20:39 17 THERE ARE SERIOUS PRIVILEGE AND WORK PRODUCT ISSUES THERE.

10:20:42 18 AS FOR THE DOCUMENTS IN DR. FORREST'S POSSESSION,
10:20:45 19 CERTAINLY THERE ARE A NUMBER OF DOCUMENTS ABOUT DAMAGES,
10:20:47 20 CAUSATION, ET CETERA, ALL OF WHICH HAVE BEEN LEFT FOR AFTER
10:20:51 21 THIS PARTIAL SUMMARY JUDGEMENT MOTION IS DEALT WITH.

10:20:54 22 WE HAVE BEEN TRYING TO ADHERE TO JUDGE PITT'S GUIDANCE,
10:20:58 23 BOTH IN SOME OF THE EARLIER HEARINGS AND AT THE SCHEDULING
10:21:01 24 CONFERENCE, WHERE THE GUIDANCE REALLY WAS, I WANT TO GET THIS
10:21:04 25 BRIEFED BY THE END OF THE YEAR. HE REJECTED A JOINT SCHEDULE

1 PROPOSED BY THE PARTIES TO GIVE US THE GUIDANCE. LET'S JUST
2 GET THE DOCUMENTS FROM META ABOUT HOW THEIR TOOLS WORK AND GET
3 THIS BRIEFED THIS CALENDAR YEAR, AND THAT IS WHAT WE HAVE BEEN
4 ATTEMPTING TO DO.

5 DR. FORREST HAS NOT RESISTED ALL DISCOVERY, I FULLY ACCEPT
6 THE COURT'S POINT OF RULE 26 AND --

7 (REPORTER CLARIFICATION.)

8 MR. QUINN: SURE.

9 DR. FORREST HAS NOT RESISTED ALL DISCOVERY, AND IN FACT
10 HAS PRODUCED AT THIS POINT SUBSTANTIALLY MORE THAN META HAS
11 PRODUCED. WE HAVE PRODUCED, AS COUNSEL INDICATED, MANY
12 HUNDREDS OF SCAM ADS, UNTIL WE GOT A LATE PRODUCTION LAST
13 NIGHT, THEY HAD PRODUCED 14. WE STILL DON'T HAVE A RESPONSE TO
14 INTERROGATORY NUMBER ONE WHICH WE SERVED IN --

15 THE COURT: I'M SORRY, BUT THAT'S NOT RELEVANT TO
16 THIS DISCUSSION.

17 YOU CAN FILE YOUR OWN JUDGE DISCOVERY DISPUTE LETTER ON
18 THAT ISSUE AND I'M HAPPY TO HEAR ABOUT IT BUT IT'S NOT A
19 COMPARER -- IT'S NOT A CONTEST, WHO HAS DONE BETTER. IT'S IS
20 THE DISCOVERY RELEVANT AND RESPONSIVE AND IS IT PROPORTIONAL TO
21 THE NEEDS OF THE CASE.

22 SO I DON'T MEAN TO CUT YOU OFF IF THERE'S SOMETHING MORE
23 YOU WANTED TO SAY ABOUT THAT.

24 MR. QUINN: THERE IS.

25 WE HAVE PRODUCED THE SCAM ADS THAT WE CAN PRODUCE WITHOUT

10:22:12 1 SERIOUS WORK PRODUCT COMPLICATION BECAUSE THE TRACKING AND THE
10:22:14 2 COMPILATION WAS DONE BY COUNSEL IN THE PROCESS OF PREPARING A
10:22:16 3 COMPLAINT.

10:22:18 4 EVEN STILL, WE WENT AND WE PROPOSED AN AGREEMENT BETWEEN
10:22:20 5 THE PARTIES TO DEAL WITH SOME WORK PRODUCT CONCERNS. THAT THEN
10:22:24 6 ENABLED US TO PRODUCE HUNDREDS OF SCAM ADS EVEN THOUGH MANY OF
10:22:28 7 THEM ARE SCREEN SHOTS AND E-MAILS BETWEEN LAWYERS AND THE LIKE.
10:22:30 8 WE HAVE KIND OF GONE THE EXTRA MILE TO PRODUCE ALL OF THAT.

10:22:33 9 AND WE HAVE REPRODUCED THE AUSTRALIAN CRIMINAL PROCEEDINGS
10:22:38 10 PRODUCTION WHICH IS THOUSANDS OF DOCUMENTS THAT DID INCLUDE
10:22:41 11 SEARCHES THROUGH DR. FORREST'S BUSINESS, THROUGH HIS E-MAILS,
10:22:43 12 THROUGHOUT E-MAILS OF HIS ASSISTANTS AND HIS CONSULTANTS, AND
10:22:46 13 META ITSELF AT THE TIME WAS DEEPLY ENGAGED, THERE ARE DOZENS OF
10:22:49 14 FOLLOW-UPS, I'VE READ THEM, BETWEEN THE PARTIES.

10:22:52 15 THE COURT: I'M SORRY, THE SEARCHES YOU ARE
10:22:54 16 DESCRIBING WERE DONE IN CONNECTION WITH THE CRIMINAL
10:22:56 17 PROCEEDINGS?

10:22:56 18 MR. QUINN: THAT'S CORRECT, YOUR HONOR.

10:22:57 19 AND WITH THE HELP OF DR. FORREST'S ASSISTANCE AND TEAM AT
10:23:02 20 DIFFERENT ORGANIZATIONS. SO THEY HAVE ALL OF THAT. THEY HAVE
10:23:05 21 NEVER IDENTIFIED ANY DEFICIENCY OR GAP, THEY THEMSELVES USE --

10:23:08 22 THE COURT: OKAY. WELL HANG ON. ON THAT, JUST SO I
10:23:11 23 UNDERSTAND WHAT WAS DONE AND WHAT META KNOWS ABOUT IT, FOR
10:23:14 24 THOSE SEARCHES, DO YOU HAVE RECORDS OF WHICH CUSTODIANS WERE
10:23:17 25 SEARCHED, WHICH TERMS WERE USED OR WHAT THE METHODOLOGY OF THE

10:23:21 1 SEARCH WAS?

10:23:22 2 MR. QUINN: WE DO. I CAN SUMMARIZE SOME OF THAT
10:23:24 3 INFORMATION OR WE CAN KIND OF MEET AND CONFER.

10:23:26 4 THE COURT: BUT YOU CAN SHARE THAT WITH META.

10:23:28 5 MR. QUINN: SURE. AND HAVE, IN FACT, IN THOSE
10:23:30 6 PROCEEDINGS WITH THEIR COUNSEL THERE.

10:23:32 7 THE COURT: SO IF THERE WERE SOMETHING THAT META FELT
10:23:34 8 WAS MISSED BY THOSE SEARCH TERMS OR THOSE -- THERE WEREN'T THE
10:23:38 9 RIGHT CUSTODIANS OR THE RIGHT TIME FRAME, OR WHATEVER IT MAY
10:23:41 10 BE, THEN THE PARTIES COULD HAVE A DISCUSSION ABOUT WHAT MIGHT
10:23:44 11 NEED TO BE ADDED OR CHANGED.

10:23:46 12 MR. QUINN: CERTAINLY WE COULD HAVE THAT KIND OF
10:23:48 13 TARGETED DISCUSSION.

10:23:49 14 THE COURT: OKAY. ALL RIGHT.

10:23:50 15 SO I UNDERSTAND WORK PRODUCT. SEARCHES HAVE ALREADY BEEN
10:23:54 16 DONE. WHAT ELSE DID YOU WANT TO BRING TO MY ATTENTION?

10:23:56 17 MR. QUINN: YEAH, I THINK I WOULD JUST EMPHASIZE TO
10:23:59 18 AS TO THE AUSTRALIAN PROCEEDINGS, META'S OWN REQUESTS TO STAY
10:24:05 19 REPEATEDLY USE THE PHRASES "NEARLY IDENTICAL" AND TALKED ABOUT
10:24:09 20 THE CLOSE RELATIONSHIP BETWEEN THOSE ACTIONS.

10:24:12 21 ALSO JUST THAT THERE IS AN EXPERT PHASE COMING. SO
10:24:14 22 INSOFAR AS DR. FORREST HAS ENGAGED EXPERTS, CONSULTING EXPERTS
10:24:20 23 WHICH WE DISCUSSED WITH THE COURT PREVIOUSLY, COUNSEL IN
10:24:23 24 PREPARING THE COMPLAINT, THERE WILL BE AN OPPORTUNITY FOR
10:24:26 25 EXPERTS TO DEAL WITH ALL OF THIS.

1 AT THIS PHASE THE GOAL IS TO JUST GET DISCOVERY ABOUT HOW
2 META'S TOOLS AND PROCESSES WORK, AND DR. FORREST AS AN
3 OUTSIDER, HE REALLY DOESN'T HAVE THAT INFORMATION, THAT IS THE
4 CRUX OF WHAT WE ARE DOING AT THIS POINT, YES.

5 THE COURT: OKAY. SO HERE'S THE DIFFICULTY WITH THAT
6 POSITION, I'M JUST GOING TO START WHERE YOU ENDED, WHICH IS
7 WHETHER DR. FORREST HAS INFORMATION. AND WHEN I SAY
8 DR. FORREST, I MEAN HIM AND HIS TEAM OF CYBERSECURITY
9 PROFESSIONALS AND EXTERNAL FRAUD PROFESSIONALS, IF THOSE ARE
10 TWO DIFFERENT CATEGORIES, THOSE ARE ALL DESCRIBED IN DETAIL IN
11 THE COMPLAINT, AND THE REQUEST FOR PRODUCTION THAT I UNDERSTAND
12 ARE AT ISSUE HERE, TRACK THE ALLEGATIONS IN THE COMPLAINT.

13 SO IT'S NOT REALLY, IN MY VIEW, PERSUASIVE TO SAY, WELL HE
14 DOESN'T HAVE ANYTHING, BECAUSE HE HAS ALLEGED THAT HE DOES.
15 AND IF THE ANSWER IS, I MADE THAT ALLEGATION, OR DR. FORREST
16 MADE THE ALLEGATION, AND HE DOES NOT HAVE ANY DOCUMENTS THAT
17 REFLECT ANY OF THAT, THEN YOU CAN SAY THAT. BUT YOU CAN'T SAY
18 THAT WITHOUT HAVING DONE A SEARCH.

19 AND IF THE SEARCH HAS ALREADY BEEN DONE, OKAY, BUT IF THE
20 SEARCH HAS NOT REALLY LOOKED FOR THESE KINDS OF THINGS, BECAUSE
21 IT HAPPENED BEFORE HE MADE THESE ALLEGATIONS. I AM NOT
22 ENTIRELY SURE OF THE TIMING OF THE CRIMINAL PROCEEDINGS AS IT
23 PERTAINS TO THE OPERATIVE COMPLAINT, BUT META IS ENTITLED TO
24 FIND OUT WHAT CONTRARY EVIDENCE -- AND IT DOESN'T HAVE TO WAIT
25 UNTIL EXPERT DISCOVERY BECAUSE THIS IS PRE-LITIGATION

1 INVESTIGATION THAT IS USED AS A FACTUAL BASIS FOR THE
2 ALLEGATIONS IN THE COMPLAINT THAT JUDGE PITTS IN TURN RELIED ON
3 IN DENYING THE MOTION TO DISMISS ON THE SECTION 230 ISSUE
4 BECAUSE HE FOUND THAT THERE WAS A DISPUTE OF FACT BETWEEN THE
5 PARTIES.

6 SO IF DR. FORREST AND HIS VARIOUS PROFESSIONALS HAVE
7 INFORMATION ABOUT HOW THE ADS WERE CREATED USING THE TOOLS,
8 THAT IS CONTRARY TO THE INFORMATION THAT META HAS, WELL THEN
9 THAT'S WHAT JUDGE PITTS IS HOPING THE PARTIES WILL DISCOVER OF
10 EACH OTHER IN PREPARATION FOR YOUR FURTHER PROCEEDINGS.

11 IT'S CLEARLY WITHIN THE SCOPE OF THE ISSUE, AS I
12 UNDERSTAND IT. I DID NOT SEE ANY DOCUMENT REQUESTS THAT SEEM
13 TO BE OUTSIDE OF PHASE ONE. SO IF THERE IS SOMETHING AMONG
14 THEM THAT YOU THINK IS OUTSIDE OF THE SCOPE, IT'S NOT
15 PARTICULARLY CALLED OUT.

16 SO IS THERE SOMETHING THAT YOU ARE TRYING TO ALERT ME TO
17 THAT YOU THINK IS OUTSIDE THE SCOPE?

18 MR. QUINN: NO, I THINK OUR POSITION IS THAT THE
19 PRODUCTION OF THE SCAM AD COMPILATIONS AND COLLECTIONS AS BEST
20 WE CAN MUSTER THEM IN THE AUSTRALIAN PRODUCTIONS HAVE LARGELY
21 ADDRESSED THOSE ISSUES INsofar AS DR. FORREST HAS THOSE IN HIS
22 POSSESSION.

23 WE ARE STILL WORKING, AS WE APPROACH SUBSTANTIAL
24 COMPLETION, IF THERE ARE ADDITIONAL REPORTS FROM CONSULTING
25 EXPERTS, THOSE KINDS OF DOCUMENTS, WE DON'T HAVE ANY OBJECTION

1 TO PRODUCING THOSE MATERIALS TO META. OUR RESISTANCE, AND THE
2 WAY THIS HAS ALWAYS BEEN FRAMED IN DISCUSSIONS BETWEEN THE
3 PARTIES, IS ABOUT RERUNNING A BUNCH OF ESI SEARCHES AND
4 CUSTODIAL SEARCHES, WHEN REALLY GIVEN THE KIND OF INFORMATION
5 WE ARE TALKING ABOUT HERE, WE HAVE ALWAYS, BOTH SIDES REALLY
6 APPROACHED THIS LIMITED PERIOD OF DISCOVERY ON THE 230 QUESTION
7 AS ONE THAT'S LARGELY NONCUSTODIAL.

8 SO IT'S JUST THAT BURDEN WE ARE SEEKING TO AVOID. THERE
9 IS NO INFORMATION WITHIN THE SCOPE OF THE 230 QUESTION IN OUR
10 POSSESSION THAT WE HAVE ANY OBJECTION TO PRODUCING OTHER THAN
11 PRIVILEGE AND WORK PRODUCT INFORMATION.

12 THE COURT: WHAT DO YOU MEAN BY NONCUSTODIAL?
13 DR. FORREST IS AN INDIVIDUAL, SO HE IS A CUSTODIAN, HE'S NOT A
14 COMPANY, SO I'M NOT SURE WHAT YOU MEAN BY NONCUSTODIAL.

15 MR. QUINN: I GUESS I JUST MEAN THAT A CATEGORICAL
16 APPROACH, IF THERE ARE THIRD PARTY CONSULTING REPORTS, WE
17 SHOULD GATHER AND PRODUCE THOSE AS OPPOSED TO THE MULTI-YEAR
18 SEARCH TERM.

19 THE COURT: SO LET ME JUST CLARIFY MY VIEW ON THIS,
20 AND I AM HAPPY TO HEAR ARGUMENT. IF DR. FORREST HAS DONE AS
21 HE'S DESCRIBED IN HIS COMPLAINT AND EMPLOYED THIRD PARTIES TO
22 DO INVESTIGATIONS AND GATHER INFORMATION AT HIS DIRECTION, THAT
23 IS FAIR GAME BECAUSE THAT WOULD BE WITHIN HIS POSSESSION,
24 CUSTODY OR CONTROL, AS I UNDERSTAND IT.

25 SO I DON'T UNDERSTAND YOU TO BE SUGGESTING THAT -- MAYBE

10:28:36 1 I'M WRONG -- THAT THERE'S SOME THIRD PARTY, IN THE SENSE THAT
10:28:39 2 YOU WOULD HAVE TO GO GET A SUBPOENA TO GET THAT INFORMATION AT
10:28:42 3 ISSUE HERE; IS THAT RIGHT?

10:28:44 4 MR. QUINN: I AGREE WITH WHAT THE COURT SAID, AND I
10:28:46 5 DON'T TAKE ANY ISSUE WITH THAT.

10:28:48 6 THE COURT: OKAY. SO IT MAY BE THAT THE SEARCHES YOU
10:28:50 7 HAVE ALREADY RUN ONCE YOU DISCLOSE THAT DETAIL TO META IN THE
10:28:52 8 CONTEXT OF THIS CASE, THE PARTIES WILL BE IN VEHEMENT AGREEMENT
10:28:56 9 THAT THOSE ARE SUFFICIENT, AND AS LONG AS YOU REVIEW THEM,
10:28:59 10 BECAUSE THERE MIGHT HAVE BEEN A DIFFERENT PARAMETER FOR -- SO
10:29:02 11 YOU DO THE SEARCH, YOU FIND THE NARROWED COLLECTION OF ESI AND
10:29:06 12 THEN YOU REVIEW FOR RESPONSIVENESS, AND IF THOSE ARE NOT
10:29:09 13 ENTIRELY ALIGNED BETWEEN THE CRIMINAL PROCEEDING AND THIS CASE,
10:29:11 14 YOU ARE GOING TO NEED TO RELOOK AT WHAT THOSE SEARCH TERMS HIT
10:29:16 15 AND MAKE A DETERMINATION, AS YOU WOULD IN ANY CASE. BUT IT MAY
10:29:20 16 BE THERE ARE OTHER SEARCH TERMS THAT MAY BE NECESSARY.

10:29:22 17 AND THEN IF THERE ARE OTHER DOCUMENTS, ADDITIONAL
10:29:25 18 DOCUMENTS TO PRODUCE, I THINK YOU OWE IT TO META TO TELL THEM
10:29:30 19 THAT PART AFTER YOU'VE CONDUCTED A SEARCH SO THAT WE CAN ALL BE
10:29:33 20 ON THE SAME PAGE ABOUT WHAT THERE IS AND ISN'T.

10:29:37 21 CONVERSELY, IF YOU ARE PREPARED TO SAY WHATEVER META HAS
10:29:40 22 IS THE DEFINITIVE EVIDENCE OF HOW THE TOOLS WORK AND YOU HAVE
10:29:43 23 NO CONTRARY INFORMATION, WELL THEN MAYBE THE PARTIES SHOULD
10:29:46 24 CONSIDER THAT AS A RESOLUTION. BUT IT SOUNDS LIKE THAT'S NOT
10:29:51 25 DR. FORREST'S POSITION.

10:29:55 1 SO YOU KNOW, YOU CAN'T JUST WAIT UNTIL LATER, IS MY POINT.
10:29:59 2 NOW IS THE TIME TO PRODUCE WHAT YOU'VE GOT THAT YOU THINK
10:30:02 3 SUPPORTS THE ARGUMENTS THAT WERE MADE TO JUDGE PITTS OF A
10:30:06 4 FACTUAL MATTER, OKAY?

10:30:09 5 LET ME ADDRESS THE QUESTION OF -- AND BY THE WAY, I DON'T
10:30:12 6 SEE THAT AS PARTICULARLY BURDENSOME. THAT'S WHAT YOU DO WITH
10:30:16 7 THE SEARCH TERMS IS TO REDUCE THE BURDEN SO THE REVIEW CAN BE
10:30:21 8 TAILORED.

10:30:21 9 SO I'M INCLINED TO ORDER YOU TO DO THAT, BUT LET'S TALK
10:30:25 10 ABOUT THE WORK PRODUCT. I UNDERSTAND IT'S WORK PRODUCT, NOT
10:30:28 11 PRIVILEGE; IS THAT CORRECT?

10:30:30 12 MR. QUINN: I THINK FOR THE -- THE WHOLE CATEGORY
10:30:34 13 HERE PRESENTS A WORK PRODUCT ISSUE. THERE MAY BE DOCUMENTS
10:30:36 14 THAT WOULD RAISE PREJUDICE ISSUES, BUT I DO THINK WORK PRODUCT
10:30:39 15 IS THE PRINCIPAL PARADIGM, IF I COULD PUT IT THAT WAY.

10:30:44 16 THE COURT: OKAY. SO TYPICALLY IF YOU ARE GOING TO
10:30:46 17 MAKE A WORK PRODUCT OBJECTION TO A RESPONSIVE DOCUMENT -- A
10:30:50 18 DOCUMENT THAT'S RESPONSIVE TO A REQUEST, YOU NEED TO LOG IT,
10:30:53 19 YOU NEED TO DESCRIBE IT IN A WAY THAT ALLOWS THE ADVERSARY TO
10:30:58 20 ASSESS THE PRIVILEGE. YOU MAY BE ABLE TO LOG THESE THINGS
10:31:01 21 COLLECTIVELY, SOMETIMES THERE IS A CATEGORICAL APPROACH, IT'S
10:31:05 22 IN RULE 26, IF IT'S APPROPRIATE YOU CAN DO THAT, SOMETIMES IT'S
10:31:08 23 NOT APPROPRIATE.

10:31:09 24 BUT KEEP IN MIND THAT WORK PRODUCT CAN BE WAIVED IF YOU
10:31:14 25 DISCLOSE IT. AND I DON'T KNOW IF YOU'VE DISCLOSED IT IN THE

1 COMPLAINT OR IF YOU PUT IT AT ISSUE. AND IT DOESN'T PROTECT
2 FACTS.

3 SO THAT GETS ME TO THE INTERROGATORIES. SO THE
4 INTERROGATORIES MAY CALL FOR, IF A DOCUMENT IS PROTECTED BY A
5 PRIVILEGE OR WORK PRODUCT, THE INTERROGATORY MAY NEVERTHELESS
6 REQUIRE YOU TO DESCRIBE A NARRATIVE FORM, THE FACTUAL
7 INFORMATION THAT YOU HAVE, YOU MEANING DR. FORREST.

8 SO THERE'S SOME ADDITIONAL WORK THE PARTIES NEED TO DO ON
9 THE PRIVILEGE AND WORK PRODUCT ISSUE BECAUSE I DON'T HAVE
10 ANYTHING IN FRONT OF ME THAT ALLOWS ME TO MAKE A DETERMINATION
11 ON THOSE POINTS, AND I CAN'T SORT OF SAY, OH, YES, EVERYTHING
12 THAT YOU DID PRE-INVESTIGATION AND POSSIBLY DISCLOSED IN YOUR
13 COMPLAINT IS NEVERTHELESS PROTECTED.

14 DO YOU UNDERSTAND MY POINT? I MEAN MAYBE THERE IS SOME
15 "THERE" THERE BUT I CAN'T TELL FROM THE PAPERS. SO THAT MIGHT
16 REQUIRE A FURTHER SUBMISSION, BUT I'M HAPPY TO HEAR ARGUMENT
17 FURTHER ON THE WORK PRODUCT POINT IF YOU WOULD LIKE TO SHARE
18 THAT.

19 MR. QUINN: I THINK JUST TO EXPLAIN THE POINT WE WERE
20 MAKING WAS REALLY WORK PRODUCT WAS ONE OF THE FACTORS IN THE
21 PROPORTIONALITY ANALYSIS WHERE HAVING MADE THE PRODUCTION OF
22 SCAM ADS, HAVING DONE THE AUSTRALIAN DISCLOSURE PROCESS, DOING
23 MORE, IT SEEMED TO US, WAS NOT CONSISTENT WITH JUDGE PITTS'S
24 GUIDANCE, NOT RELEVANT, AND THE WORK PRODUCT WAS ONE OF THE
25 REASONS THAT STRUCK US AS NONPROPORTIONAL.

1 BUT I CERTAINLY UNDERSTAND THE COURT'S GUIDANCE ON THAT
2 POINT, JUST TO EXPLAIN WHERE WE WERE COMING FROM.

3 THE COURT: OKAY. SO NORMALLY I TEND TO TREAT WORK
4 PRODUCT AND PRIVILEGE AS DISTINCT -- IT'S BURDENSOME, BUT IT'S
5 ALSO JUST LIKE NOT ALLOWED UNLESS YOU CAN MEET THE REQUIREMENT
6 FOR DISCLOSURE OF WORK PRODUCT WHERE YOU NEED THE INFORMATION
7 FOR SOME REASON.

8 BUT I DON'T THINK THE PARTIES HAVE CRYSTALIZED THEIR
9 DISPUTE ON THIS POINT, IS MY ASSESSMENT.

10 SO I AM -- I THINK SOME FURTHER EFFORT IS REQUIRED, AND
11 I'M HAPPY TO HEAR FROM YOU BOTH ABOUT WHAT YOU THINK THAT
12 SHOULD LOOK LIKE, BUT I'M INCLINED TO HAVE YOU REPORT BACK TO
13 ME ON THAT POINT.

14 AND I CAN ISSUE A SHORT ORDER, AS I'M INCLINED TO DO, THAT
15 SAYS THIS DISCOVERY SHALL BE HAD, IT IS RELEVANT, AND IT IS
16 RESPONSIVE, AND IT DOES NOT APPEAR TO BE BURDENSOME,
17 PARTICULARLY IF CUSTODIANS AND CERTAIN TERMS ARE NEGOTIATED AND
18 THE REVIEW IS CONDUCTED AFTER THOSE ARE APPLIED.

19 AND I CAN'T RESOLVE THE WORK PRODUCT OR PRIVILEGE
20 OBJECTIONS IN A VACUUM. SO I'M INCLINED TO GIVE YOU THAT
21 GUIDANCE AND SEND YOU OFF TO DO SOME FURTHER WORK.

22 SO LET ME GIVE YOU, MR. QUINN, AN OPPORTUNITY TO RESPOND
23 TO THAT SUGGESTION AND THEN I WILL TURN BACK TO MS. ZAPPALA.

24 MR. QUINN: I THINK WE ALWAYS WELCOME THE COURT'S
25 GUIDANCE, AND ALWAYS, EVEN IF WE DO SOMETIMES VEHEMENTLY

10:34:03 1 DISAGREE, CONFER PRODUCTIVELY. SO VERY HAPPY TO DO THAT AND
10:34:07 2 REPORT BACK.

10:34:08 3 I WILL SAY FOR BROADER CONTEXT, THEY HAVE MADE A REQUEST
10:34:11 4 FOR EXTENSION WHICH WE ARE CONSIDERING AND DISCUSSING, WE HAVE
10:34:15 5 ALSO MADE A PROPOSAL THIS MORNING TO TRY TO RESOLVE THE
10:34:20 6 PROTECTIVE ORDER THAT'S PENDING.

10:34:20 7 SO I THINK THERE ARE A NUMBER OF THINGS THE PARTIES CAN
10:34:21 8 CONFER PRODUCTIVELY ON AND REPORT BACK TO THE COURT, ON
10:34:23 9 INCLUDING THAT PROTECTIVE ORDER ISSUE WHICH REMAINS OPEN.

10:34:25 10 THE COURT: OH, IS THE PROTECTIVE ORDER ISSUE ALREADY
10:34:27 11 BRIEFED BEFORE ME?

10:34:28 12 MR. QUINN: IT IS. I THINK NOBODY REQUESTED A
10:34:31 13 HEARING ON IT SO IT WASN'T NOTICED FOR TODAY.

10:34:33 14 THE COURT: OH, I HAVE IT, AND I HAVEN'T LOOKED AT
10:34:33 15 IT.

10:34:34 16 SO WHEN DO YOU THINK YOU WILL KNOW WHETHER I HAVE TO
10:34:36 17 DECIDE ON THAT OR NOT?

10:34:38 18 MR. QUINN: I THINK MAYBE A STATUS REPORT IN 14 DAYS
10:34:39 19 ON ALL THESE ISSUES.

10:34:40 20 THE COURT: SO I HAVE A PROPOSAL FOR A STATUS REPORT
10:34:45 21 IN 14 DAYS AFTER SOME GUIDANCE AND ORDER ON THIS PARTICULAR
10:34:45 22 DISPUTE.

10:34:48 23 LET'S SEE, SO 14 DAYS WILL PUT YOU PAST THE MAY 30TH DATE.

10:34:53 24 WHAT IS THE -- WHAT IS META'S PROPOSAL?

10:34:58 25 MS. ZAPPALA: I'M SORRY, META'S PROPOSAL?

10:35:01 1 THE COURT: WHAT IS META'S PROPOSAL FOR OUR NEXT
10:35:04 2 STEPS HERE ON THIS DISPUTE?

10:35:05 3 MS. ZAPPALA: I THINK YOUR PROPOSAL MAKES SENSE. I
10:35:06 4 THINK THE PARTIES CAN MEET AND CONFER TO DETERMINE IF THEY CAN
10:35:10 5 REACH AGREEMENT ON A REASONABLE SCOPE OF DISCOVERY.

10:35:13 6 I SUSPECT THE PARTIES WILL HAVE SOME DISAGREEMENT BECAUSE
10:35:15 7 I THINK WE HAVE DISAGREEMENT AS TO THE RELEVANCE OF THE
10:35:20 8 AUSTRALIAN PROCEEDINGS, AND THE SUFFICIENCY OF THOSE, BUT WE
10:35:21 9 WILL ENGAGE IN A MEET AND CONFER, AND IF WE ARE NOT ABLE TO
10:35:24 10 REACH A RESOLUTION, WE WILL COME BACK TO YOUR HONOR.

10:35:27 11 THE COURT: AND DO YOU THINK THE 14 DAYS IS ENOUGH
10:35:29 12 TIME TO REPORT BACK TO THE COURT ON THAT ISSUE?

10:35:30 13 MS. ZAPPALA: I THINK WE MAY NOT BE COMPLETE, BUT WE
10:35:34 14 SHOULD BE CLOSE IN TEN DAYS.

10:35:38 15 THE COURT: OKAY. WELL I WILL SET THE 14-DAY
10:35:42 16 DEADLINE AND THEN IF YOU NEED MORE TIME, BECAUSE YOU ARE
10:35:44 17 ENGAGED IN PRODUCTIVE DISCUSSIONS, JUST LET ME KNOW AND I CAN
10:35:47 18 EXTEND IT.

10:35:47 19 BUT I WANT TO MAKE SURE THAT NEITHER PARTY IS PREJUDICED
10:35:51 20 BY DELAY GIVEN THE DEADLINES YOU CURRENTLY HAVE AND MAYBE YOU
10:35:52 21 WILL GET RELIEF FROM THOSE, BUT I THINK THAT'S IMPORTANT TO
10:35:55 22 KIND OF KEEP ON TRACK.

10:35:56 23 AND THEN PLEASE DO LET ME KNOW IF I DON'T NEED TO DO
10:35:58 24 ANYTHING ON YOUR PROTECTIVE ORDER ISSUE.

10:36:02 25 IS THERE ANYTHING ELSE THAT META WOULD LIKE TO RESPOND TO

10:36:05 1 BY THE WAY, I DIDN'T GIVE YOU AN OPPORTUNITY TO REPLY?

10:36:08 2 MS. ZAPPALA: NOT AT THIS TIME, YOUR HONOR.

10:36:09 3 THE COURT: OKAY GREAT.

10:36:09 4 THEN THAT'S WHAT I WILL DO, I WILL ISSUE A SHORT ORDER

10:36:12 5 GIVING YOU THAT DIRECTION AND GUIDANCE AND THEN I WILL WAIT TO

10:36:16 6 HEAR FROM YOU IN 14 DAYS.

10:36:18 7 ALL RIGHT. THANK YOU ALL VERY MUCH.

10:36:19 8 MR. QUINN: THANK YOU, YOUR HONOR.

10:36:19 9 MS. ZAPPALA: THANK YOU, YOUR HONOR.

10:36:20 10 (THE PROCEEDINGS WERE CONCLUDED AT 10:36 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE
INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink, appearing to read "Summer Fisher", written in a cursive style.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATE: 5/21/25